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Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Ontario Securities Commission
Saskatchewan Financial Services Commission

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RE: Comments to the Proposed Ontario Securities Commission Rule 91-506 and Proposed Companion Policy and Proposed Ontario Securities Commission Rule 91-507 and Proposed Companion Policy

Dear Sir or Madam

State Street Global Advisors Ltd. ("SSgA") welcomes the opportunity to comment on Ontario Securities Commission (the "Commission") proposed rules 91-506 and 91-507 and companion polices appurtenant thereto which establish the (i) Commission determination of which products and financial contracts or arrangements are within the scope of the trade repository and reporting requirements ("Scope Rule"); and (ii) designation and operation of trade repositories and mandatory reporting of derivatives (the "TR Rule") (collectively, the "Proposed Rules").

SSgA has previously commented on the Canadian Securities Administrators Staff Consultation Paper 91-301 Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting. We are at this time responding to the

request for comment to ask that the Commission clarify or amend the Proposed Rules as set forth herein.

SSgA is a recognized leader and ranks as a major investment manager in Canada. Our clients are located across the country and include corporations, public funds, foundations, endowments, life insurance companies and government agencies. In conjunction with SSgA's other investment centers and sister companies worldwide, State Street Corporation provides clients with integrated solutions that combine investment management, transition management, trust, custody, recordkeeping and administrative services.

In its capacity as an investment advisor or trustee, SSgA is one of the largest end users of foreign exchange products in Canada. In calendar year 2012, SSgA executed over 20,000 separate foreign exchange transactions, with aggregate notional exposure to all currencies equal to CAD 104 billion with 13 broker-dealers acting as market makers in the Canadian markets in various foreign exchange products.

Scope Rule

We limit our comments under the Scope Rule to the proposed treatment of certain Foreign Exchange ("FX") contracts under the Proposed Rules. We agree with the Commission's determination that a short dated FX transaction ("Spot FX") or a deliverable FX transaction entered into for the purpose of settling a securities trade should be treated as 'Excluded Derivative" and therefore exempt from reporting. However, we request the Commission consider further amendments to the final version of the Scope Rule to address further clarifications regarding which FX transactions are intended to settle securities trades.

1. Security Settlements

The Scope Rule includes an exclusion for a "contract or instrument was entered into contemporaneously with a related security trade and the contract or instrument requires settlement on or before the relevant security trade settlement deadline." This exclusion recognizes that FX contracts structured in this way are non-speculative hedges in connection with an underlying securities transaction. We believe this exclusion should be expanded to address (i) repatriation of dividends; and (ii) FX contracts executed in order to hedge exposure in connection with security trades on a "net" basis.

1.1 Repatriation

We believe the same rationale for this exclusion applied to FX contracts for security settlement could be attributed to an FX contract used to effect a repatriation of dividends, distributions or proceeds denominated in a foreign currency into an investment portfolio's base currency. If an investment portfolio is holding securities or instruments that announce an income or distribution date or that have a known maturity date, a party may want to hedge their currency exposure and enter into FX contract that settles on or about the date of the distribution or other payment. We believe that FX contracts used for such repatriation that have a settlement date that corresponds to payment date for the dividend or other

payment and that have a principal amounts that correspond to the dividend or other payment amount should generally be subject to treatment as "Excluded Derivative."

1.2 Net Portfolio Settlement

The Scope provides an exclusion for FX contracts executed contemporaneously with securities transactions. In most instances, the amount of the FX contract and settlement date will coincide with the underlying securities transaction.

However, an investment portfolio will have multiple positions for securities or instruments denominated in the same currency. On any given local business day, a manager of the investment portfolio may execute several buy-sell orders or, may be expected to settle multiple buy-sell orders. It would be expected that the portfolio manager would net the currency obligations for all of the transactions and have one net amount of each currency that it needs to buy or sell[1].

In this case, the amount of deliverable currency under the FX contract may not correspond with any identifiable security transaction. However, the amount of the deliverable currency under the FX contract would correspond to the portfolio's *net* currency obligations resulting from securities trades executed on a particular day or expected to settle on a particular day. SSgA would utilize such a risk-reducing strategy in order to reduce a Canadian client portfolio's exposure to the volatility of the underlying FX market.

The Commission has recognized in the companion policy to 91-506CP that the netting and set-off of FX contracts *at settlement* should not change the characterization of an FX contract that is otherwise "deliverable." The scenario we describe is different, because rather than asking the Commission to recognize netting of FX contracts at settlement, we ask the Commission to recognize that netting of the currency obligations *before the FX contract is executed* should not change the characterization of an FX trade as "executed contemporaneously with a related securities trade."

TR Rule

We request the Commission consider further amendments to the final version of the TR Rule to address whether a non-dealer local counterparty should be obligated to satisfy the reporting obligations under the TR Rule.

The TR Rule states, in section 27(1)(b), that if the transaction is not cleared through a clearing agency and is between a dealer and a counterparty that is not a dealer it is the dealer that is responsible for performing the reporting duties. However, the rule further states "(d)espite any other provision in this Rule, if the reporting counterparty as determined under subsection (1) is not a local counterparty and that counterparty does not comply with the local counterparties reporting obligations under this Rule, *the local counterparty must act as the reporting counterparty.*" (italics added). It is this reversion of the reporting obligations to the local counterparty that is of concern.

[1] For example, on a particular day a portfolio manager may execute 3 buy orders requiring delivery of €100, € 150 and € 175 and execute 3 sell orders requiring receipt of € 100, €75 and € 50. This would result in a net position of € 200 to be delivered (*i.e.* €100 + € 150 + € 175 - € 100 + €75 + € 50 = €200.)

SSgA

Like most asset managers, all of our FX contracts will be executed with professional FX dealers and therefore we will be operating under the assumption that in all cases, our counterparty, the dealer, will perform the reporting obligations. This approach is consistent with the requirements in the United States under the Dodd-Frank Act, where the dealer is required by regulation to perform the reporting duties. However, under Dodd-Frank, the reporting obligations do not revert back to the non-reporting end-user in the event of a dealer's failure to perform the required reporting obligations. We believe this approach should be adopted by the Commission.

Because an end-user who always trades with a dealer will never have reporting obligations under Dodd-Frank, SSgA, like many asset managers, has not invested in infrastructure necessary to comply with the required reporting obligations. For SSgA to ensure its ability to perform this reporting function would require extensive capital outlays for systems development and enhancements, increased staffing, etc. These expenditures might end up being passed on to the investing public through higher investment management fees or in the form of reduced investment returns. It should be noted that all of these expenditures would be made for a contingency that may never occur, because it is expected the dealers will in fact satisfy the reporting obligations. Given that dealers will also be required to satisfy the reporting obligations under Dodd-Frank and in most instances under EMIR, it seems unlikely they would attempt to evade compliance with reporting obligations under the TR Rule.

Conversely, swap dealers have already begun performing reporting functions in the U.S. and therefore have infrastructure in place that allows them to comply with the TR Rule without any material systems enhancements. Furthermore, even if a U.S. dealer was not subject to jurisdiction of the Commission, trades executed with U.S. dealers are already subject to reporting, with information subject to public dissemination.

For this reason, we continue to recommend against the reversion of reporting obligations to the local non-dealer counterparty. Should the Commission be disinclined to reconsider this point, we suggest that the Commission consider a local non-dealer counterparty's good faith effort to confirm that reporting will be performed by a foreign dealer counterparty a satisfactory approach to complying with section 27(2) of the TR Rule.

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Thank you for the opportunity to provide comments and recommendations regarding the Model Rules.

Respectfully submitted,

Peter Lindley
President and Head of Investments, State Street Global Advisors, Ltd.